IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 559 of 2003

with

CIVIL APPLICATION NO. 1557 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

KIRITKUMAR MURLIDHAR THAKRE

Appearance:

MR MG NAGARKAR for appellant/applicant

MR MAHESH B SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/04/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

This appeal, under Section 23 of the Railways Claims Tribunals Act, 1987, is filed by the appellant Union of India, through General Manager, Western Railway, against the judgment and order passed by the Railway Claims Tribunal, Ahmedabad, in Claim Application No. OA 98 of 1999 dated 6.7.2001, whereby the Tribunal allowed the Claim Application and held that the respondent - claimant is entitled to receive compensation of Rs.3 lacs along with interest at the rate of 9% from the date of application with costs of application as per rules.

2. It is the case of the respondent that on 4.5.1996, when he was travelling to Bilimora by 50 UP Valsad Passenger train from Ahmedabad, at Kosamba Railway Station, he got down to take water and after having taken water, when he came back near the compartment, the train came into motion without any whistle at fast speed. He tried to get into the train and in the course of obstruction by heavy rush, he fell down, resulting into complete traumatic amputation of right hand wrist joint and of left finger and middle finger. He, therefore, filed the claim for compensation of Rs.3 lacs.

3. The claim was contested by the appellant by filing reply, denying all the allegations made in the application. According to the appellant, the respondent was to be put to strict proof of each and every averment.

4. The respondent, to substantiate his claim, has examined himself and also relied upon Exh.A/1 to A/5. The appellant did not lead any evidence.

5. The Tribunal, after appreciating the oral as well as documentary evidence on record, granted the application and passed the judgment and order as stated above.

6. We have heard learned Advocate Mr.Nagarkar for the appellant. Mr.Nagarkar submitted that the respondent sustained injuries while trying to board the running train and therefore, the incident cannot be called as an untoward incident, covered under Section 123(C)(2) of the Railways Act, 1989.

7. From the evidence of the claimant Kiritkumar Murlidhar Thakre, it is clear that the respondent boarded the train after purchasing the ticket. He was boarding the train from Ahmedabad and was going to Bilimora. It is also clear that he got down for taking water. According to him, when he returned to the compartment and

when he was on the last step, he was pushed down, resulting into amputation of his right hand wrist joint and left and middle finger. His version is very well supported by Exh.A/1 to A/5.

8. As the appellant has not led any evidence to rebut the evidence of the respondent, namely, that he was a bonafide passenger and in the incident he sustained serious injuries, a presumption under Section 114 of the Evidence Act about the person being a bonafide passenger can be drawn. From the evidence of the respondent coupled with the documentary evidence produced by him, in our opinion, he has established that he had fallen down from the running train. The Tribunal, in our opinion, has rightly drawn the following circumstances in favour of the respondent, namely, that he has fallen down from 50 UP train; that the police had reached the spot after a lapse of time of accident and the probability of the ticket might have been lost or taken away cannot be ruled out; and that the respondent before the accident had travelled a distance of more than 350 kms., and if he had been really without ticket, he would have not gone undetected by the checking staff of the appellant as being without ticket. In absence of the Railway Administration having not led any evidence and having failed to carry out the burden to prove that the respondent was not a bonafide passenger, it is to be concluded that he was a bonafide passenger and suffered injuries. There is no clear reason for us not to accept the said findings. We hardly see any merit in the submission advanced by learned Advocate for the appellant that the respondent has failed to establish the fact that he sustained injuries while trying to board the running train.

9. The Tribunal, while deciding Issue No.3, has in fact held that the respondent is entitled to receive Rs.3.45 lacs as compensation, however, since he has claimed compensation of Rs.3 lacs, he was deemed to have waived the rest of the amount and he could not claim more than that. Suffice it to say that we are in total agreement with the reasoning and the ultimate conclusion recorded by the Tribunal. There being no substance in the appeal, it is dismissed. There shall be no order as to costs.

10. In view of the order passed in the main appeal, the Civil Application for stay does not survive and it is rejected.

(Kshitij R. Vyas, J.)

(K.S.Jhaveri, J.)

Sreeram.